

Before Amol Rattan Singh, J.

JAGBIR SINGH AND OTHERS— *Petitioners*

versus

CHARANJIT SINGH AND OTHERS— *Respondents*

CR No.6661 of 2015

March 29, 2019

Civil Procedure Code, 1908, O 6 Rl 17—Amendment in Written Statement can only be sought by filing application—Held Amended written statement cannot be filed under the guise of amendment to plaint—Amendment can only be sought by filing application specifically indicating the words or paragraphs to be added, omitted or substituted in original pleading—Revision petition allowed.

Held that, having considered the matter, as regards dismissal of the SLP filed against the judgment of this Court in Mahant Kapil Devs' case, it is seen that the petition seeking Special Leave to Appeal was dismissed by their Lordships without making any comment whatsoever on the issues arising therein and therefore, naturally, that order cannot be held to be a binding precedent overriding the earlier judgment of the Supreme Court in Gurdial Singhs' case (supra).

Further held that, as regards the observation of this Court in Mahant Kapil Devs 'case to the effect that what has been stated in Gurdial Singhs' case by the Supreme Court (as reproduced hereinabove) was only by *obiter dicta*, with the utmost of respect, I would find myself not in agreement with that observation, in view of the fact that it has been very clearly held by their Lordships in paragraphs 13 to 18 of that judgment, that even for seeking an amendment in the written statement filed in reply to an amended plaint, it cannot be done under the guise of a 'consequential amendment' and therefore, necessarily, an application under Order 6 Rule 17 of the CPC has to be filed by the defendants.

Further held that, though it has been held that an amendment sought in the written statement in reply to an amended plaint should "ordinarily and liberally be allowed", thereafter it has been specifically stated that the Court shall see that the plea sought to be introduced is by way of an answer to the plea previously permitted to be incorporated by way of amendment by the opposite party and that a new plea cannot be

permitted to be added in the garb of a consequential amendment though it can be applied by way of an independent primary amendment.
(Para 7)

Further held that, the contention of learned counsel for respondent no.10 is to be rejected also on the touchstone of the very clear statutory provision incorporated in Rule 17 of Order 6 of the CPC (as applicable to the States to Punjab and Haryana and UT Chandigarh), which stipulates that “every application for amendments shall be in writing and shall state the specific amendments which are sought to be made indicating the words or paragraphs to be added, omitted or substituted in the original pleading”.

(Para 8)

Further held that, consequently, with a clear cut direction having in fact been given in Gurdial Singh's case by the Supreme Court, in terms of Order 6 Rule 17 especially when read with the statutory provision contained in sub rule 2 thereof, what has been held in Kapil Devs' case, as also in Girdharilas' case (supra) by this Court, cannot be held to be binding precedent, in my opinion, and consequently, the trial Court wholly erred in dismissing the application filed by the petitioners-plaintiffs.

(Para 9)

Further held that Therefore, this petition is allowed, with the impugned order set aside. However, the amendment of the petitioners-plaintiffs having been allowed at a stage even when evidence had been led, the respondents defendants would be at liberty even now to move an appropriate application in terms of Rule 17 of Order 6 of the CPC, which would be considered on its own merits by the trial Court and decided expeditiously, keeping in view the ratio of the judgment of the Supreme Court in Gurdial Singhs' case (supra).

(Para 10)

G.S.Sirphikhi, Advocate
for the petitioners

Vipin Mahajan, Advocate,
for respondent no.10

AMOL RATTAN SINGH, J. oral

(1) By this petition, the petitioners challenge the order of the learned Civil Judge (Junior Division), Batala, dated 25.8.2015 (copy Annexure P-11), by which an application filed by the petitioners

(plaintiffs in the suit), under Section 151 of the Code of Civil Procedure, has been dismissed.

(2) Vide the said application, the petitioners-plaintiffs sought that the written statement filed by the respondents-defendants to the amended plaint be rejected on the ground that without actually moving an application for amendment of the written statement originally filed, a new case was being set up by the defendants, taking shelter of the fact that the application of the petitioners-plaintiffs under Order 6 Rule 17 of the CPC had been allowed.

(3) As per the impugned order, the petitioners-plaintiffs had amended the plaint by adding paragraph 20A (erroneously referred to as paragraph 21A in the impugned order) and instead of filing a written statement simply replying to that additional paragraph, the respondents-defendants have filed a written statement also altering the stand taken in other paragraphs, thereby setting up a new case.

(4) The learned trial Court after having considered the matter eventually relied upon a judgment of this Court in *Mahant Kapil Dev* versus *Smt. Parkash Wati and others*¹, to hold that once a plaint had been amended, it gave a complete right to the defendants to file a new written statement, taking whatever plea they wish to.

(5) A judgment cited on behalf of the plaintiffs, i.e. *Improvement Trust, Patiala through its Administrator/Chairman* versus *Jaswinder Kaur and others*², was also referred to by that Court but was held to be not applicable in view of the fact that the later judgment was found (by that Court) holding something to the contrary.

(6) Consequently, the application was dismissed and a completely new amended written statement replying to the amended plaint was allowed to be filed.

(7) Before this Court, learned counsel for the petitioners-plaintiffs first draws attention to sub rule 2 of Rule 17 of Order 6 of the Code of Civil Procedure, as applicable to the States of Punjab and Haryana and UT Chandigarh.

(8) He thereafter relies upon a judgment of the Supreme Court (arising from a judgment passed by this Court), in *Gurdial Singh*

¹ 2012(3) CCC 828

² 2010(4) CCC 534

versus **Raj Kumar Aneja**³, from which he points to the following paragraphs:-

“13. Before parting we feel inclined to make certain observations about the loose practice prevalent in subordinate Courts in entertaining and dealing with applications for amendment of pleadings. It is a disturbing feature and, if such practice continues, it is likely to thwart the course of justice. The application moved by the occupants for amendment in their written statements filed earlier did not specifically set out which portions of the original pleadings were sought to be deleted and what were the averments which were sought to be added or substituted in the original pleadings. What the amendment applicants did was to give in their applications a vague idea of the nature of the intended amendment and then annex a new written statement with the application to be substituted in place of the original written statement. Such a course is strange and unknown to the procedure of amendment of pleadings. A pleading, once filed, is a part of the record of the Court and cannot be touched, modified, substituted, amended or withdrawn except by the leave of the Court. Order 8 Rule 9 of CPC prohibits any pleadings subsequent to the written statement of a defendant being filed other than by way of defence to a set-off or counter-claim except by the leave of the Court and upon such terms as the Court thinks fit. xx xx xx. xx xx xx xx

18. When one of the parties, has been permitted to amend his pleading, an opportunity has to be given to the opposite party to amend his pleading. The opposite party shall also have to make an application under Order 6 Rule 17 of the CPC which, of course, would ordinarily and liberally be allowed. Such amendments are known as a consequential amendments. The phrase "consequential amendment" finds mention in the decision of this Court in **Bikram Singh & Ors. versus Ram Baboo & Ors. AIR 1981 Supreme Court 2036**. The expression is judicially recognized. While granting leave to amend a pleading by way of consequential amendment the

³ 2002(1) RCR (Rent) 194

Court shall see that the plea sought to be introduced is by way of an answer to the plea previously permitted to be incorporated by way of amendment by the opposite party. A new plea cannot be permitted to be added in the garb of a consequential amendment, though it can be applied by way of an independent of primary amendment.”

(4) Learned counsel for respondent no.10 on the other hand submits that once a plaint has been allowed to be amended, any written statement filed in reply to the amended plaint has to be allowed, especially when it was the trial Court itself which directed the defendants to file an amended written statement.

(5) He further submits that there was absolutely no cause to file an application under Order 6 Rule 17 CPC, once an amendment to the plaint had been allowed.

(6) In support of his contention, he cites from a judgment of a Division Bench of this Court in *Girdharilal* versus *Krishan Datt*⁴, wherein it has been held to the following effect:-

“Having held this, he appears also to have observed that the new pleas contained in the fresh written statement to the amended plaint were unauthorised and deserved to be rejected; for the purpose of completing the case, however, he considered it proper to give findings on the new pleas as well. On behalf of the respondent, observations of the lower appellate Court have been repeated, and the Counsel has submitted that the new written statement should not have contained any other additional plea except the one confined and restricted to the amended portion of the plaint, without the express permission of the Court as laid down in Order 6 rule 17, Code of Civil Procedure.

I am unable to uphold this contention. In the first place there is no rule of law, statutory or otherwise, which restricts or limits the defendant when he is called upon to file a written statement to an amended plaint, to contest the plaintiff's claim, to any particular pleas. The general scheme of the Code of Civil Procedure and the policy underlying the law of pleadings does not suggest any such restriction and the counsel has not been able to cite any precedent in support of

⁴ AIR 1960 (Punjab) 575

his contention. Pleas in a written statement to an amended plaint are not exclusively controlled or governed by the provisions of Order 6 rule 17 of the Code; the provisions of Order 8 are equally-if not more- relevant and important in this connection.

In my view the question does not appear, strictly speaking, to be one of amendment of the first written statement which could only be effected with the permission of the Court; it really pertains more to the right of the defendant to contest the suit as made out in the amended plaint read as a whole. The law relating to pleadings should not be construed and applied with undue rigidity and strictness if no prejudice or embarrassment towards fair trial of the suit is caused. It would of course be open to the Court to consider whether or not, being an afterthought, the pleas in question lacked merit, but the right of the defendant to raise the new pleas could hardly be negated by reference to the provisions of Order 6 rule 17 only.

Besides, it is not shown as to why could the defendant not resist, even the new amended relief claimed by the plaintiff, by pleading that the property had been purchased for his benefit and had thus been thrown into the "common stock". On no reasonable ground could the defendant be prohibited or debarred from urging the new plea in answer to the new relief. Again, if in the trial Court no such objection against the new plea being unauthorised had been pressed, it is doubtful if it could, for the first time, be raised in the Court of appeal.

Absence of a formal order authorising the amendment-if at all it was necessary-was in the present circumstances a mere irregularity not affecting the merits. The sold object of the pleadings is to see where the parties differ, and that each side may be fully alive to the questions that are about to be argued, so that they may adduce all appropriate evidence; and if this object has been achieved, then to rule out the amended pleadings would tend to defeat, instead of promoting, the cause of justice, for serving which alone the rules of procedure exist. I have therefore no hesitation in repelling the contention raised on behalf of the respondent."

(7) He further relies upon a judgment of a coordinate Bench of

this Court, as was relied upon by the trial Court, in *Mahant Kapil Dev* versus *Smt.Parkash Wati and others*⁵, wherein after noticing the judgment of the Supreme Court in *Gurdial Singhs'* case (supra), it was held as follows:-

“15. Judgment in the case of *Gurdial Singh* (supra) cited by learned senior counsel for respondents no.1 and 2 cannot be invoked because the issue as to whether new plea in written statement to amended plaint can be taken or not in issue in the said case. It was, therefore, not argued or canvassed in that case. Some observations in this regard have been made in the said judgment, but the same are obiter dicta. In that case, amendment of pleading made by occupants of demised property had been allowed by this Court. Pursuant to the amended pleading, trial of the case had ended and the appellants/occupants had failed on merits. Consequently, the Hon'ble Supreme Court left the matter at that only. Hon'ble Supreme Court observed that amended part of the pleading should be specifically stated in application for amendment. However, said observations are also not relevant for the decision of instant revision petition which involves a completely different issue. At the risk of repetition, it may be highlighted that the controversial portion of the written statement to amended plaint is only consequential amendment and has been pleaded to controvert the amended part of the plaint and to assert title of defendant no.3 which is denied in the amended part of the plaint.”

(8) Thus, what has been observed by their Lordships in *Gurdial Singhs'* case was held to be only *obiter* and not laying down the ratio of a principle of law.

(9) Mr. Mahajan further submits that the judgment in *Mahant Kapil Devs'* case was taken by way of SLP by the respondents therein before the Supreme Court, with that petition having been dismissed on 13.7.2012.

(10) Having considered the matter, as regards dismissal of the SLP filed against the judgment of this Court in *Mahant Kapil Devs'* case, it is seen that the petition seeking Special Leave to Appeal was dismissed by their Lordships without making any comment whatsoever on the issues arising therein and therefore, naturally, that order cannot

⁵ 2012(3) CCC 828

be held to be a binding precedent overriding the earlier judgment of the Supreme Court in *Gurdial Singhs'* case (supra).

(11) As regards the observation of this Court in *Mahant Kapil Devs'* case to the effect that what has been stated in *Gurdial Singhs'* case by the Supreme Court (as reproduced hereinabove) was only by *obiter dicta*, with the utmost of respect, I would find myself not in agreement with that observation, in view of the fact that it has been very clearly held by their Lordships in paragraphs 13 to 18 of that judgment, that even for seeking an amendment in the written statement filed in reply to an amended plaint, it cannot be done under the guise of a 'consequential amendment' and therefore, necessarily, an application under Order 6 Rule 17 of the CPC has to be filed by the defendants.

(12) Though it has been held that an amendment sought in the written statement in reply to an amended plaint should "ordinarily and liberally be allowed", thereafter it has been specifically stated that the Court shall see that the plea sought to be introduced is by way of an answer to the plea previously permitted to be incorporated by way of amendment by the opposite party and that a new plea cannot be permitted to be added in the garb of a consequential amendment though it can be applied by way of an independent primary amendment.

(13) Further, the contention of learned counsel for respondent no.10 is to be rejected also on the touchstone of the very clear statutory provision incorporated in Rule 17 of Order 6 of the CPC (as applicable to the States to Punjab and Haryana and UT Chandigarh), which stipulates that "every application for amendments shall be in writing and shall state the specific amendments which are sought to be made indicating the words or paragraphs to be added, omitted or substituted in the original pleading".

(14) Consequently, with a clear cut direction having in fact been given in *Gurdial Singh's* case by the Supreme Court, in terms of Order 6 Rule 17 especially when read with the statutory provision contained in sub rule 2 thereof, what has been held in *Kapil Devs'* case, as also in *Girdharilas'* case (supra) by this Court, cannot be held to be binding precedent, in my opinion, and consequently, the trial Court wholly erred in dismissing the application filed by the petitioners-plaintiffs.

(15) Therefore, this petition is allowed, with the impugned order set aside. However, the amendment of the petitioners-plaintiffs having been allowed at a stage even when evidence had been led, the

respondents- defendants would be at liberty even now to move an appropriate application in terms of Rule 17 of Order 6 of the CPC, which would be considered on its own merits by the trial Court and decided expeditiously, keeping in view the ratio of the judgment of the Supreme Court in *Gurdial Singhs'* case (supra).

Sumati Jund